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12 CAROL BONNER, City Clerk

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF SAN MATEO  
15

16 SAN BRUNO COMMITTEE FOR  
ECONOMIC JUSTICE; UNITE HERE  
17 LOCAL 2; MARY DOWDEN; LEIF  
PAULSEN; SHERAL MARSHALL;  
18 BEATRIZ JOHNSTON; KATHLEEN  
SEMENZA; LILIBETH BONIFACIO;  
19 MOLLY GOMEZ,

20 Petitioners,

21 v.

22 CITY OF SAN BRUNO;  
23 CAROL BONNER, as City Clerk,

24 Respondents

25 SAN BRUNO HOTELS, LLC; OTO  
DEVELOPMENT, LLC

26 Real Parties in Interest.  
27  
28

FILING FEE EXEMPT PURSUANT TO  
GOVERNMENT CODE § 6103

**FILED**  
SAN MATEO COUNTY

SEP 28 2016

by *[Signature]*  
DEPUTY CLERK

Case No. CIV538861

~~[PROPOSED]~~ JUDGMENT


CIV538861  
JUD  
Judgment Filed  
201797



1 This Court having, on August 26, 2016, entered an Order Denying Motion for Peremptory  
2 Writ of Mandate, attached hereto as Exhibit A, which denied Petitioners relief with respect to  
3 each cause of action alleged in their First Amended Verified Petition for Peremptory Writ of  
4 Mandate, and good cause appearing, the Court hereby enters judgment against Petitioners and in  
5 favor of (1) Respondents, City of San Bruno and Carol Bonner, City Clerk for the City of San  
6 Bruno, and (2) Real Parties-in-Interest, San Bruno Hotels, LLC, and OTO Development, LLC.

7 Respondents and Real Parties-in-Interest shall be entitled to recover their costs from  
8 Petitioners.

9  
10 SEP 23 2016

11   
12 THE HONORABLE GEORGE A. MIRAM  
13 Judge of the Superior Court

14 APPROVED AS TO FORM:

15 By: \_\_\_\_\_  
16 Arthur Liou  
17 Counsel for Petitioners  
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# **EXHIBIT A**

**FILED**  
**SAN MATEO COUNTY**

AUG 26 2016

Clerk of the Superior Court

By

DEPUTY CLERK

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN MATEO

Case No.: CIV 538861

**ORDER DENYING MOTION FOR  
PEREMPTORY WRIT OF MANDATE**

SAN BRUNO COMMITTEE FOR  
ECONOMIC JUSTICE, et al.,  
  
Petitioners,

v.

Date: July 28, 2016  
Time: 2:00  
Dept: 28

CITY OF SAN BRUNO; CAROL BONNER  
as City Clerk for the City of San Bruno,  
  
Respondents.

Petitioners' Motion for Peremptory Writ of Mandate came on regularly for hearing on July 28, 2016 at 2:00 p.m. in Department 28 of the San Mateo Superior Court, the Hon. George A. Miram, presiding. Arthur Liou, Esq. of the law offices of Leonard Carder, LLP appeared on behalf of Petitioners, San Bruno Committee for Economic Justice, Unite Here Local 2, Mary Dowden, Leif Paulsen, Sheral Marshall, Beatriz Johnston, Kathleen Semenza, Lilibeth Bonifacio and Molly Gomez. Kevin D. Siegel, Esq. of the law offices of Burke, Williams & Sorensen, LLP and Marc Zafferano, Esq., City Attorney for the City of San Bruno appeared for Respondents, City of San Bruno and Carol Bonner, City Clerk. David H. Blackwell, Esq. of the law offices of Allen, Matkins, Leck, Gamble, Mallory & Natsis, LLP appeared on behalf of the Real Parties in Interest.

CIV538861  
ORD  
Order  
164676



1 After reviewing the documents filed by the parties and hearing the arguments of counsel,  
2 the matter was submitted. The Court now makes the following order:

3 Respondents' requests for Judicial Notice are granted pursuant to Evidence Code sections  
4 451(a) and 452(a), (b) and (c).

5 The Motion for Peremptory Writ of Mandate is DENIED.

6 The duty of the courts is to jealously guard the referendum power of the People.  
7 Associated Home Builders v City of Livermore (1976) 18 Cal 3d 582, 591. Thus, the Courts  
8 apply a liberal construction to this power whenever it is challenged and doubts are reasonably  
9 resolved in favor of the use of this power. *supra.*, p.591. This broad principle does not, however,  
10 entitle parties to infringe on administrative powers reserved to duly elected officials.

11 Here, respondents properly identify several reasons the present referendum is not  
12 available in the present circumstances.

13 First, Petitioner has failed to demonstrate exhaustion of its administrative remedies. The  
14 demonstration of an appeal is deficient. While petitioner belatedly contends that appeal would  
15 be futile or that the letter urging the city to process the referendum should constitute an appeal,  
16 neither contention is persuasive. Failure to exhaust administrative remedies precludes suit even  
17 if it is highly unlikely that the decision makers would reverse the decision. See South Coast  
18 Regional Com. v. Gordon (1977) 18 Cal 3d 832, 838. Further, unlike the footnoted letter in  
19 Lindelli v Town of San Anselmo (2003) 111 Cal App 4<sup>th</sup> 1099, 1106, the May 23, 2016 letter  
20 here (Exhibit 22 to the Fish declaration), fails to comport with an existing San Bruno mechanism  
21 for appeal. Absent in Lindelli, but present here, San Bruno Municipal Code Chapter 1.32  
22 specifically provides for a mechanism of appeal to be initiated by filing a notice of appeal. The  
23 Fish letter, Petitioner's Exhibit 22, cannot fairly be read to constitute the written notice of appeal  
24 filed with the City Clerk referenced in the San Bruno Municipal Code. Petitioners contentions  
25 regarding the adequacy of the appellate process addressed for the first time in their reply brief,  
26 are similarly unpersuasive. Petitioner bears the burden in the first instance of demonstrating  
27 exhaustion of administrative remedies. Petitioner fails to meet that burden. Further, by failing to  
28

1 raise the issue until their reply brief, plaintiff has given respondent little opportunity to  
2 demonstrate through evidence the adequacy of the appellate process.

3 On a substantive level, Petitioner argues that the Purchase and Sale Agreement (PSA) is  
4 tantamount to a Development Agreement. Development Agreements are generally legislative  
5 acts subject to referendum. In contrast, a PSA merely pursues a plan already adopted and is  
6 considered an administrative act. See Worthington v City Council of City of Rohnert Park  
7 (2005) 130 Cal App 4<sup>th</sup> 1132, 1140-41. Legislative acts may be appropriate for review by  
8 referendum. However, administrative acts are reserved for the city' council's determination.  
9 See City of San Diego v Dunkl (2001) 86 Cal App 4<sup>th</sup> 384, 399.

10 The plan here was previously adopted by the City. San Bruno Municipal Code Chapter  
11 1.32, 2.20, 2.32; City of San Bruno Resolutions number 2015-81, 2015-82.

12 Government Code section 65865.2 prescribes necessary terms for a Development  
13 Agreement including the duration of the agreement, the permitted uses of the property, the  
14 density or intensity of the use, maximum height and size of the proposed building and provisions  
15 for preservation or dedication of land for public purposes. Most, if not all, such requirements  
16 are absent from the present PSA in question. Moreover, procedural prerequisites for a  
17 Development Agreement such as adoption by ordinance and a second reading are entirely absent  
18 here.

19 The subject Purchase and Sale Agreement (PSA) in question is not the same as, nor  
20 tantamount to, a Development Agreement.

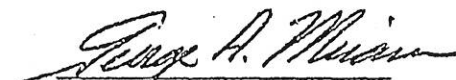
21 Next, Petitioner contends that even if the Resolution is not a Development Agreement, it  
22 nonetheless should be regarded as a legislative act. This contention fails for the some of the same  
23 reasons as the argument regarding Development Agreements. The power to sell property which  
24 implements prior legislative decisions regarding the development of property is an  
25 administrative, not legislative act. The power to be exercised is legislative in its nature if it  
26 prescribes a new policy or plan; whereas it is administrative in its nature if it merely pursues a  
27 plan already adopted by the legislative body or some other power superior to it. Worthington,  
28 supra p. 1140-1141. Here this Court finds the latter characterization applies, not the former. The

1 resolution pursues an existing plan. Therein, the present resolution differs in significant detail  
2 from the legislative acts described in the authorities cited by Petitioner.

3 This Court finds that contrary to Petitioner's contention, adoption of the resolution in question  
4 does not constitute a legislative act. Resolution 2016-26 is not a legislative act subject to  
5 referendum. The City Clerk's failure to process the referendum to which petitioners' lacked a  
6 right is unavailing.

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8 IT IS SO ORDERED.

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10 AUG 25 2016

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12 GEORGE A. MIRAM  
13 Judge of the Superior Court  
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